

BILL ANALYSIS

Senate Research Center
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S.B. 1162
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the interim, subcommittees of the Senate Committee on Natural Resources and the Senate Committee on Business and Commerce were formed to look at the trend of acquisition, consolidation, and merger across the investor owned water and sewer utilities in Texas. The subcommittees held hearings and examined the impact this trend was having on customers through rates and quality of service.

The subcommittees recommended a series of reforms, one of which was improving the notice requirements and information provided to customers impacted by a sale, transfer, or merger application filed at the Texas Commission on Environmental Quality.

S.B. 1162 enhances the notice to customers impacted by a sale, transfer, or merger application and requires a utility to be more transparent about the cost associated with the sale, transfer, or merger and the impact that those costs will have on customers.

As proposed, S.B. 1162 amends current law relating to requirements for the purchase or acquisition of a water or sewer system.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13.301, Water Code, by amending Subsections (a), (d), (e), (f), and (g) and adding Subsections (a-1), (a-2), (a-3), and (e-1), as follows:

(a) Requires a utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, to file a written application with the Texas Commission on Environmental Quality (TCEQ) electronically and give public notice of the action, rather than give public notice of the action unless public notice is waived by the executive director of TCEQ (executive director) for good cause shown.

(a-1) Requires TCEQ to post the application on TCEQ's Internet website not later than the 30th day after the date the application is accepted for filing.

(a-2) Requires the parties to the proposed transaction jointly, for a proposed sale, acquisition, lease, rental, merger, or consolidation transaction subject to Subsection (a) that involves more than one utility or water supply or sewer service corporation, or that involves a single utility or water supply or sewer service corporation and a political subdivision's water or sewer system, at the time notice is given under Subsection (a)(2), to mail written notice to each affected customer in accordance with TCEQ rules. Requires that the written notice include:

- (1) a comparison of the rates and quality-of-service records of the parties;
- (2) the purchase price or lease rate of the sale, acquisition, lease, or rental;
- (3) the anticipated transaction costs, including legal fees, regulatory fees, and interest;
- (4) a disclosure of any investments or expenses any party to the transaction anticipates it will make during the next 24 months for infrastructure improvement to a water or sewer system involved in the transaction and the estimated effect the investments or expenses will have on rates;
- (5) the expected closing date of the transaction;
- (6) the estimated date by which customers to be affected by the transaction will be required to pay service fees in an amount different than service fees payable by those customers on the date of the application;
- (7) any plans to implement a rate change during the pendency of the proposed transaction; and
- (8) notice to the customer that the customer can make a written request for a public hearing to TCEQ.

(a-3) Authorizes the executive director, notwithstanding any other provision of this section, to waive the notice requirement if the sale, acquisition, lease, rental, merger, or consolidation transaction involves two or more parties, and all but one are in receivership, are under temporary management, or have been referred for the appointment of a temporary management or receivership.

(d) Requires TCEQ, after the parties to the proposed transaction have made the application as required by this section and provided notice as required by this section, to, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger, or consolidation to determine whether the proposed transaction will serve the public interest. Requires TCEQ, in making the determination, to consider:

- (1) the factors listed under Section 13.246(c) (relating to requiring that certificates of public convenience and necessity and amendments to certificates be granted on a nondiscriminatory basis after consideration by TCEQ);
- (2) the anticipated benefits of the transaction;
- (3) the anticipated costs of the transaction;
- (4) whether the price to be paid for the assets is excessive; and
- (5) if the applicant intends to consolidate water or sewer systems under a single tariff, whether the systems being consolidated have substantially similar facilities, quality of service, and cost of service.

(e) Requires the executive director, on the expiration of the 120-day notification period, rather than before the expiration of the 120-day notification period, to notify all known parties to the transaction of the executive director's decision whether to request that TCEQ hold a public hearing to determine if the transaction will serve the public interest. Requires the executive director to request a public hearing if, before the expiration of the 120-day notification period, at least 10 percent of the customers of a utility or a water supply or sewer service corporation subject to Subsection (a-2) make a written request for a public hearing. Requires the executive director to request a hearing if:

- (1)-(2) Makes no change to these subdivisions.

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of noncompliance with the requirements of TCEQ, rather than TCEQ or the Texas Department of Health or continuing mismanagement or misuse of revenues as a utility service provider;

(4) Makes no change to this subdivision; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Subsection (d), rather than Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(e-1) Requires TCEQ to hold a public hearing at the request of the executive director.

(f) Authorizes the sale, acquisition, lease, rental, merger, or consolidation, unless the executive director requests that a public hearing be held, to be completed as proposed.

(g) Prohibits the sale, acquisition, lease, rental, merger, or consolidation from being completed, if a public hearing is requested by the executive director, unless TCEQ determines after a public hearing that the proposed transaction serves the public interest. Deletes existing text prohibiting the sale, acquisition, lease, or rental from being completed, if a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, unless TCEQ determines that the proposed transaction serves the public interest.

SECTION 2. Provides that Section 13.301, Water Code, as amended by this Act, applies only to a sale, acquisition, lease, rental, merger, or consolidation for which an application is filed with TCEQ on or after January 1, 2014. Provides that a sale, acquisition, lease, rental, merger, or consolidation for which an application is filed before January 1, 2014, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Provides that the changes in law made by this Act do not affect a transfer of state agency functions as provided by another Act of the 83rd Legislature, Regular Session, 2013, that becomes law. Requires that, to the extent functions of TCEQ affected by the changes in law are transferred to another agency, references to TCEQ in Section 13.301, Water Code, as amended by this Act, be construed as references to the other agency.

SECTION 4. Effective date: September 1, 2013.